

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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08/141,017 10/26/93 GOLDBERG

E 4733

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 15M1/0108  
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EXAMINER

WEBMAN, E

ART UNIT	PAPER NUMBER
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1502

18

DATE MAILED:

01/08/97

This is a communication from the examiner in charge of your application.  
 COMMISSIONER OF PATENTS AND TRADEMARKS

## OFFICE ACTION SUMMARY

10/8/96

Responsive to communication(s) filed on \_\_\_\_\_

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

Claim(s) 1 - 7 is/are pending in the application.

Of the above, claim(s) 3, 4 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1, 2, 5-7 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claim 1,2, 5-7 rejected under 35 U.S.C. § 103 as being unpatentable over Balasz.

Balasz teaches applying hyaluronic acid for protecting tissue during surgical manipulation (column 15, lines 3-9). 0.5% solutions <sup>for</sup> ~~at~~ a molecular weight of 750k are disclosed (column 3, lines 50-53).

It would have been obvious to apply hyaluronic acid to tissue for the beneficial effect of protection in view of Balasz.

As to the claimed treatment prior to manipulation, Balasz's teaching of protection during surgical administration indicates application prior to manipulation.

Applicants argue "prior" is not indicative of "during". However, the phrase "... it serves as a mechanical protector of

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the tissue during surgical manipulation' indicates that the hyaluronic acid of Balasz must be applied prior to manipulation if it is to serve as such a protector. As to the citations to the examples, Balasz is not limited to ~~this~~ examples. As to applicants' argument regarding the molecular weight, the above cited molecular weight clearly reads on applicants' broad range of 50K-1.5M.

No claims allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is (703) 308-4432. The examiner can normally be reached on Monday-Friday from 9AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiners' supervisor, T.K. Page, can be reached on (703) 308-2927. The fax phone number for this Group is (703) 308-5408.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2351.

  
EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500

E.J.WEBMAN:vrr  
January 6, 1997